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7  
 8 BEFORE THE DEPARTMENT OF CORPORATIONS  
 9 OF THE STATE OF CALIFORNIA  
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11 In the Matter of	)	FILE NO. 135280
	)	
12 THE CALIFORNIA CORPORATIONS	)	
13 COMMISSIONER,	)	
	)	STATEMENT OF ISSUES IN SUPPORT OF
14 Complainant,	)	NOTICE OF INTENTION TO ISSUE ORDER
15 v.	)	DENYING INVESTMENT ADVISER
	)	CERTIFICATE
16 SCHULTZ INVESTMENT ADVISORY,	)	
	)	(California Corporations Code Section 25232)
17 Respondent.	)	
	)	
	)	
19 _____	)	

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 21 Wayne Strumpfer, the Acting California Corporations Commissioner ("Commissioner") of  
 22 the Department of Corporations ("Department") alleges and charges as follows:

23 **I. JURISDICTION AND VENUE**

24 1. This action is brought to deny the investment adviser application of Schultz  
 25 Investment Advisory ("SIA"), pursuant to Corporations Code section 25232. The Commissioner is  
 26 authorized to administer and enforce the provisions of the California Corporate Securities Law of  
 27 1968 ("CSL")(Corporations Code § 25000 et seq.) and the regulations promulgated thereunder (Cal.  
 28 Code, tit. 10, § 260.000 et seq.), pursuant to Corporations Code section 25610.

2. On or about April 29, 2005, Eric V. Schultz ("Schultz"), sole proprietor of SIA, filed an application with the Commissioner for an investment adviser certificate. SIA is located at 320 Laguna Terrace, Simi Valley, California 93065.

**II. FIRST CAUSE FOR DENIAL OF APPLICATION: THE SEC'S BAR ORDER  
ISSUED AGAINST SCHULTZ (CORP. CODE § 25232, SUBD. (d)(1))**

3. Corporations Code section 25232 authorizes the Commissioner to issue an order denying an investment adviser certificate if it is in the public interest and the applicant or any person directly or indirectly controlling the investment adviser, among others, has been subject to a denial, revocation or suspension order by the Securities and Exchange Commission ("SEC"). Specifically, Corporations Code section 25232 provides, in relevant part:

The commissioner may, after appropriate notice and opportunity for hearing, by order censure, deny a certificate to, or suspend for a period not exceeding 12 months or revoke the certificate of, an investment adviser, if the commissioner finds that the censure, denial, suspension, or revocation is in the public interest and that the investment adviser, whether prior or subsequent to becoming such, or any partner, officer or director thereof or any person performing similar functions or any person directly or indirectly controlling the investment adviser, whether prior or subsequent to becoming such, or any employee of the investment adviser while so employed has done any of the following:

...

(d) Is or has been subject to (1) any order of the Securities and Exchange Commission or the securities administrator of any other state denying or revoking or suspending his or her registration as an investment adviser, or investment adviser representative, or as broker or dealer or agent, . . . .

4. On or about January 24, 2002, the SEC, pursuant to a settlement, issued an order barring Schultz for 3 years from, among other things, associating with any broker-dealer and from acting as an investment adviser. The SEC asserted that between August 1997 and September 1998, Schultz offered and sold securities in Iris Limited Partnership ("Iris LP") for Jerry Womack ("Womack"), while employed by the firm of Schoff & Baxter. The SEC claimed that Schultz raised approximately \$3 million from about 100 investors and that these securities transactions were conducted without the permission of Schoff & Baxter. Moreover, the SEC contended that Schultz received a total of almost \$1 million in compensation, about \$350,000 from Womack and \$590,000 from Iris LP. The bar remained in place until late January 2005.

1           5.       In connection with the offers and sales of Iris LP, the SEC also asserted that Schultz  
2 made misrepresentations of material facts, including the misrepresentation that Womack would  
3 invest the investors' money in the stock market pursuant to an investment strategy that Womack had  
4 developed and used successfully, and that investors could expect substantial returns. Contrary to  
5 Schultz' representations, Womack did not invest the majority of funds in the stock market. Rather,  
6 Womack's trading resulted in a net loss to investors and he misused and misappropriated a large  
7 portion of investor funds in a ponzi scheme to pay other investors their principal and purported  
8 profits.

9           6.       The SEC's January 2002 bar order prohibited Schultz from, among other things,  
10 associating with any broker-dealer and from acting as an investment adviser for 3 years. Cause,  
11 therefore, exists to deny SIA's investment adviser application pursuant to Corporations Code section  
12 25232, subdivision (d)(1).

13           **III.    SECOND CAUSE FOR DENIAL OF APPLICATION: THE NASD'S BAR**  
14 **ORDER ISSUED AGAINST SCHULTZ (CORP. CODE § 25232, SUBD. (d)(2))**

15           7.       Corporations Code section 25232, subdivision (d)(2) also permits the Commissioner  
16 to deny an applicant's investment adviser application if that applicant has been subject to any order  
17 of any national securities association. Specifically, Corporations Code section 25232, subdivision  
18 (d)(2), provides, in relevant part:

19                   (d) Is or has been subject to ... (2) any order of any national securities association or  
20                   national securities exchange (registered under the Securities Exchange Act of 1934)  
21                   suspending or expelling him or her from membership in that association or exchange or from  
22                   association with any member thereof, or . . . .

23           8.       On or about October 18, 2001, pursuant to a Letter of Acceptance, Waiver and  
24 Consent, the National Association of Securities Dealers ("NASD") issued an order barring Schultz  
25 from associating with any NASD member firm. The NASD claimed that Schultz engaged in private  
26 securities transactions during the period of August 22, 1997 through May 1998. Specifically,  
27 Schultz sought and solicited investors for Womack while employed with and without the permission  
28 of Schoff & Baxter. Schultz purportedly received a 5% referral fee from Womack for every referral  
he made to Womack. The NASD asserted that Womack transferred all of the investor money within

1 his possession and/or control into the Iris Limited Partnership (“Iris LP”). Womack was the General  
2 Partner in Iris LP. Schultz received a 5% referral fee for all investor referrals he made to the Iris LP.  
3 The NASD also claimed that Schultz referred more than 90 investors to Womack and the Iris LP.  
4 The Iris LP and the Womack Strategy, however, turned out to be a ‘ponzi scheme’ that resulted in  
5 significant customer losses. The bar order remains in place.

6 9. In addition, the NASD also alleged that Schultz, in connection with the marketing and  
7 sale of the Iris LP, made certain misrepresentations to the investors he solicited. For instance,  
8 Schultz told the investors that their money would be invested in the stock market pursuant to the  
9 Womack Strategy, which was generating substantial profits of at least 15% per month. The strategy  
10 as it turned out was a ‘ponzi scheme’ in which the profits paid by Womack were actually new  
11 investor monies paid to earlier investors as ‘profits.’ Schultz also stated that Womack was registered  
12 with the SEC. However, Womack had no such registration. Furthermore, Schultz told investors that  
13 Womack held a “seat” on the floor of the New York Stock Exchange but Womack had no affiliation  
14 with the New York Stock Exchange.

15 10. The NASD’s action against Schultz for engaging in private securities transactions  
16 while an employee of and without permission from its member broker-dealer firm, Schoff & Baxter  
17 resulted in the NASD’s issuance of an order barring Schultz from associating with any NASD  
18 member firm. The bar order remains in place. Cause, therefore, exists to deny SIA’s investment  
19 adviser application pursuant to Corporations Code section 25232, subdivision (d)(2).

20 **IV. THE DENIAL OF SCHULTZ INVESTMENT ADVISORY’S APPLICATION**  
21 **IS IN THE PUBLIC INTEREST**

22 11. Schultz’ current application for an investment adviser certificate is his third  
23 application to the Commissioner for an investment adviser certificate. The initial investment adviser  
24 certificate was issued on or about September 22, 1998 to Schultz Investment Advisory (Eric V.  
25 Schultz dba) (“Schultz I”) pursuant to California Corporations Code section 25230. Schultz was the  
26 sole proprietor and president of Schultz I. Schultz, at that time, was also an agent for the broker-  
27 dealer firm of Schoff & Baxter.  
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1           12.     The Department conducted a regulatory examination of the books and records of  
2 Schultz I on January 20, 2000. The examination found that Schultz had custody of client funds  
3 totaling approximately \$9 million, and that Schultz commingled these funds into an investment pool  
4 and invested these funds in high-risk derivative pools and volatile high tech stocks. It was later  
5 discovered that Schultz failed to disclose to his clients the formula and methodology he used to  
6 apportion gains and losses in the investment pool. The regulatory examination revealed numerous  
7 violations of the CSL. Consequently, the Commissioner issued an order to cease violations of the  
8 CSL and appointed a conservator on February 18, 2000.

9           13.     Subsequently, and arising out of the January 2000 regulatory examination, the  
10 Commissioner filed a civil action against Schultz, on March 16, 2000, alleging violations of the CSL  
11 beginning October 1, 1998 and continuing thereafter. The Commissioner sought to enjoin Schultz  
12 from further violations of the law and to obtain a receiver. A stipulation on March 17, 2000 between  
13 the parties resulted in a preliminary injunction against Schultz and Schultz I. Thereafter, pursuant to  
14 a stipulation dated April 27, 2000, a final judgment was entered on May 2, 2000 against Schultz  
15 wherein Schultz was required, among other things, to pay civil penalties and costs of litigation in the  
16 amount of \$50,000 and to surrender his existing investment adviser certificate, and to reapply for a  
17 new certificate. The final judgment also provided that Schultz' new certificate would be subject to  
18 an order issued by the Commissioner imposing certain terms and condition, including a monitor for a  
19 period of not less than 2 years.

20           14.     Schultz received his new investment adviser certificate under the corporate entity  
21 name of Schultz Investment Advisory, Inc. ("Schultz II") on or about August 31, 2000. The  
22 Commissioner issued an order imposing conditions on the new certificate. Some of the conditions  
23 included the following: the appointment of Nancy Lininger and her business entity, The Consortium  
24 ("Monitor"), to serve as monitor for a 2 year period with reports to be filed with the Commissioner;  
25 certain investment suitability requirements; and a \$25,000 tangible net worth requirement. An  
26 amended order was issued on October 2, 2000 that allowed Schultz II to drop its tangible net worth  
27 requirements to \$5,000 during the period of October 1, 2000 through September 30, 2001. However,  
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1 the amended order reinstated a tangible net worth requirement of \$25,000 beginning October 1, 2001  
2 and continuing thereafter.

3 15. The Commissioner learned, through the Monitor's reports dated June 14 and August  
4 27, 2001, of instances where Schultz had failed to comply with the conditions imposed by the order  
5 issued on August 31, 2000. For instance, the order required Schultz II to maintain certain records to  
6 show that each investment adviser client met the suitability standards set forth in the order. The  
7 Monitor, however, found some client files that did not contain all of the required documentation.  
8 Also, the order indicated that Schultz II "shall only engage in restricted trading strategies for  
9 investment adviser clients, who have a minimum initial account balance of \$50,000. The Monitor  
10 found that some clients did not meet the minimum investment requirement.

11 16. On September 12, 2001, Schultz submitted a letter requesting that Schultz II be  
12 allowed to continue to operate with the lower tangible net capital requirement of \$5,000. The  
13 Commissioner denied Schultz's request due to the deficiencies raised by the Monitor's June 14 and  
14 August 27, 2001 reports. Subsequently, on or about October 26, 2001, Schultz applied to and the  
15 Commissioner accepted the surrender of Schultz II's investment adviser certificate.

16 17. Schultz has been given ample opportunity to conduct business as an investment  
17 adviser provided he follows the law. Schultz' history, however, has shown that he is incapable of  
18 doing so. His conduct as an investment adviser has resulted in an action against him by the  
19 Department, the SEC and the NASD. It is the Commissioner's obligation to ensure that the public is  
20 not harmed by an incompetent or unscrupulous investment adviser since the investment adviser can  
21 easily make recommendations or take actions that can destroy their clients' financial portfolios, with  
22 devastating consequences for the clients, and the clients' spouses and children. The public,  
23 therefore, cannot be placed at risk by allowing Schultz to conduct business again as an investment  
24 adviser.

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**IV. PRAYER FOR RELIEF**

WHEREFORE, based on the foregoing, the Commissioner finds it is in the public interest and does hereby pray that Respondent's application for investment adviser certificate be denied pursuant to section 25232, subdivisions (d)(1) and (2).

Dated: November 28, 2005  
Los Angeles, California

WAYNE STRUMPFER  
Acting California Corporations Commissioner

By: \_\_\_\_\_  
MARLOU de LUNA  
Senior Corporations Counsel  
Enforcement Division